

IN THE MATTER OF LICENSE NO. 90637
Issued to: Roy J. BOURG, JR. Z-458648204

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1990

Roy J. BOURG, JR.

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 13 February 1973, an Administrative Law Judge of the United States Coast Guard at New Orleans, Louisiana suspended Appellant's license for three months outright upon finding him guilty of negligence. The specification found proved alleges that while serving as operator on board the MV FIVE FORKS under authority of the license above captioned on or about 4 February 1972, Appellant did negligently fail to provide for the safety of one of the passengers Robert J. Ricaud, by permitting him to disembark the vessel under hazardous conditions without requiring the use of a lifesaving device, while the vessel was at the Mobil Oil Drilling Rig Central Facility 129, Block 129, Eugene Island area, Gulf of Mexico.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the Certificate of death of Robert J. Ricaud and the testimony of two members of the crew of the FIVE FORKS.

In defense, Appellant offered in evidence his own testimony and that of a character witness.

At the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved. He then served a written order on Appellant suspending his license for a period of three months outright.

The entire decision and order was served on 27 February 1973. Appeal was timely filed.

FINDINGS OF FACT

On 4 February 1972, Appellant was serving as operator on board the FIVE FORKS and acting under authority of his license while the vessel was at sea. The FIVE FORKS, a crewboat, was carrying two passengers to the Mobil Oil Drilling Rig Central Facility 129 in the Gulf of Mexico. Appellant maneuvered the stern of the vessel to the southwest corner of the Facility and one passenger, utilizing a swing rope attached to the platform, (the only means of transfer), swung to the platform without incident. The other passenger, Mr. Ricaud, attempted the same, but failed and was pulled back aboard the vessel by a member of the crew. Because Mr. Ricaud was totally inexperienced in this regard, Appellant, although the sea conditions were normal for such operations (approximately 5-6 feet), maneuvered the vessel to the south landing where the seas were calmer.

Mr. Ricaud, who weighed about 240 pounds, then attempted to swing to the platform, but fell into the water. he was thrown a ring buoy which he grasped for some 30-40 minutes while the crew of the FIVE FORKS and others, who were in the water and on the boat, attempted to get him back aboard. All efforts proved unsuccessful and he subsequently drowned.

The National Transportation Safety Board, in its report of 11 August 1971 on the "Explosions and Fire on the Chambers and Kennedy Offshore Platform, Block 189-L and Fire on M/V CARRYBACK in Gulf of Mexico, May 28, 1970", found the use of swing ropes without life preservers to be an unsafe practice. Furthermore, the Offshore Operators Committee "Manual of Safe Practices in Offshore Operations", dated 23 November 1967 and 1 January 1972, states that life preservers should be utilized in all personal transfers between vessels and platforms. The witnesses testified that their experience indicated that these recommendations were, prior to the incident in question, not implemented in actual industry practice. Mr. Ricaud did not request and was not provided a life preserver for use during the transfer operation which resulted in his untimely demise.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that:

- (1) the Administrative Law Judge erred in finding that hazardous conditions existed at the time in question; and
- (2) the Administrative Law Judge erred in finding the Appellant negligent.

APPEARANCE: Phelps, Dunbar, Marks, Claverie and Sims New

Orleans, Louisiana.

OPINION

The tragic occurrence which gave rise to the present proceedings indicates that the transfer procedure utilized at that time was in some manner deficient. While the record is less than conclusive as to whether or not a life jacket would have supplied the necessary increment of safety in this case, a discussion of the underlying issue is facilitated by such an assumption. The true question is upon whom fell the burden of providing a safe personnel transfer procedure.

That burden was recently recognized as falling squarely on the shoulders of the platform owner rather than the crewboat operator. Richard O. Smith v Chevron Oil Company, Civil Action No. 70-2296 (E.D. La., June 30, 1973). See also Massey v. Williams - McWilliams Inc., 414 F. 2d 675 (5th Cir., 1969). The smith court actually held that the swing rope procedure is "a perfectly safe and reasonable means of disembarkation." The Administrative Law Judge stated that Appellant should not be charged with knowledge of the National Transportation Safety Board's recommendations. (R. 63). These recommendations and those continued in the Offshore Operator's manuals would seem to be directed at the platform operators.

Indeed, it is heartening to note that, since the incident in question, Mobil has supplied life jackets to be used during swing rope transfers. (R 57). At the time of the incident, however the only life jackets aboard FIVE FORKS were those required under Coast Guard regulations, properly stowed and marked "For emergence use only".

The decedent neither exhibited anticipation nor requested a life jacket. Indeed, in Appellant's experience, life jackets were used only by those few passengers who brought them aboard themselves. Under all of the circumstances, it cannot be said that Appellant failed to exercise due care in fulfilling his responsibilities to his passenger. Having had no duty to voluntarily supply a life jacket for the transfer, he cannot be held negligent for failure to do so.

ORDER

The order of the Administrative Law Judge dated at New Orleans, Louisiana on 13 February 1973, is VACATED and the charge DISMISSED.

C. R. BENDER

Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 27th day of September 1973.

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